

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lebanon Educational Broadcasting Foundation,)	File No. EB-03-KC-022
Licensee of Noncommercial Station KTTK(FM))	NAL/Acct. No. 200332560022
Lebanon, Missouri)	FRN 0002-5292-38

FORFEITURE ORDER

Adopted: October 27, 2004

Released: October 29, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Lebanon Educational Broadcasting Foundation (“Lebanon”), licensee of noncommercial Station KTTK(FM), Lebanon, Missouri, for its willful violation of the public file requirements of Section 73.3527(c)(1) of the Commission’s Rules (“Rules”).¹

II. BACKGROUND

2. On January 30, 2003, an agent from the Commission’s Kansas City, Missouri Field Office (“Field Office”) inspected Station KTTK’s facilities, and observed that certain documents (the station’s contour map and issues/programs list, and copy of the “Public and Broadcasting” manual) were missing from the station’s public files and thus not made available during the station’s regular business hours. As a result of the inspection, on April 18, 2003, the Field Office released a *Notice of Apparent Liability for Forfeiture* (“NAL”).² The NAL proposed a \$4,000 forfeiture against Lebanon for its apparent willful violation of Section 73.3527(c)(1) of the Rules, downwardly adjusting the \$10,000 base forfeiture amount in recognition of the fact that the “public file contained a portion of the required items.”³

3. Lebanon responded to the NAL on May 9, 2003. In its response, Lebanon sought cancellation of the proposed forfeiture. Lebanon admitted that the contour map and manual were not shown to the FCC agent. Lebanon claimed that such material was in the public file, but not shown to the agent, because the station’s assistant manager had to leave prior to completion of the inspection and the station employee who was present throughout the inspection was unfamiliar with the public file contents. Lebanon further admitted that the issues/program lists were not shown to the FCC agent. Lebanon acknowledged that lists for the last two quarters of 2001 and all four quarters of 2002 was missing from

¹47 C.F.R. § 73.3527(c)(1) (requiring noncommercial broadcast stations to maintain, and make for public inspection during regular business hours, complete files relating to the station).

²*Lebanon Educational Broadcasting Foundation*, NAL/Acct. No. 200332560022 (Enf. Bur., Kansas City Office, April 18, 2003).

³*Id.* at ¶ 5.

the station's public file, but claimed that the employee tasked with that responsibility has been disciplined and that the file has since been updated to include the lists. Finally, in support, Lebanon submitted copies of its contour map, manual and updated issues/program lists.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ and the *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷ As discussed below, we have considered Lebanon's response to the *NAL* in light of these statutory factors and have found that further reduction of the proposed forfeiture amount is not warranted.

5. As a noncommercial broadcast licensee, Lebanon's public file must contain its contour map and public broadcasting manual,⁸ and such material must be made available for public inspection during its regular business hours.⁹ Lebanon claimed that the material was in its public file, but admitted that such material was not shown to the FCC agent and thus was not made available for public inspection. Because Lebanon admitted that the material was not made available for inspection during the station's regular business hours, we conclude that no cancellation or reduction of the proposed forfeiture is warranted in this regard.

6. Lebanon is also required to include within its public file "every three months a list of programs that have provided the station's most significant treatment of community issues,"¹⁰ and make such lists available during its regular business hours.¹¹ As the licensee of the station, Lebanon is responsible for compliance with the Commission's requirements, and is not absolved from liability for the lapses of an employee that was tasked with the responsibility of updating the station's issues/programs lists.¹² Moreover, as the licensee of the station, Lebanon is "expected" to correct violations by updating

⁴47 U.S.C. § 503(b).

⁵47 C.F.R. § 1.80.

⁶12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁷47 U.S.C. § 503(b)(2)(D).

⁸*See* 47 C.F.R. §§ 73.3527(e)(3) and (7).

⁹*See* 47 C.F.R. § 73.3527(c)(1).

¹⁰*See* 47 C.F.R. § 73.3527(e)(8).

¹¹*See* 47 C.F.R. § 73.3527(c)(1).

¹²*See Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 ¶¶ 6-7 (2002) (denying the antenna structure owner's claim that the forfeiture should be cancelled because the failure to comply with the lighting requirements resulted from the failure of its lessee/contractor to monitor the lights, or notify it regarding light outages, and finding the violation to be willful); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 290-291 ¶ 6 (1977); *Wagenwood Broadcasting Co.*, 25 FCC 2d 361, 361-62 ¶ 2 (1972); *Charter Communications VI, LLC*, 17 FCC Rcd 16516, 16518-19 ¶¶ 8-9 (Enf. Bur. 2002) (denying cable operator's claim that the forfeiture should be (continued....))

its missing issues/programs lists, but its corrective actions implemented after Commission inspection and/or action do not mitigate its past violations.¹³ Because the lists were not made available for inspection during the station's regular business hours, we conclude that no cancellation or reduction of the proposed forfeiture is warranted in this regard.

7. In sum, Section 1.80(b)(4) of the Rules¹⁴ sets a base forfeiture amount of \$10,000 for public file violations. As previously stated, the *NAL* took into account that Lebanon's public file was only partially incomplete, and downwardly adjusted the base forfeiture amount to \$4,000. In the instant case, we do not believe a further reduction of the proposed forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁵ Lebanon Educational Broadcasting Foundation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000.00) for willful violation of Section 73.3527(c)(1) of the Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁶ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

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reduced because the violations were due to its employees' lapses and misunderstandings, and finding the violation to be willful); *American Paging, Inc.*, 12 FCC Rcd 10417, 10419-20 ¶ 11 (WTB 1997).

¹³See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21875-76 ¶¶ 26-28 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 ¶ 7 (1994); see also *TCI Cablevision of Maryland, Inc.*, 7 FCC Rcd 6013, 6014 ¶ 8 (1992) (noting that it would be inappropriate to base "mitigation of cancellation of a forfeiture upon corrective action taken subsequent to misconduct upon which liability is based," because it "would tend to encourage remedial rather than preventative action").

¹⁴47 C.F.R. § 1.80(b)(4).

¹⁵47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁶47 U.S.C. § 504(a).

¹⁷See 47 C.F.R. § 1.1914.

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Pamela Rhoades, Assistant General Manager, Lebanon Educational Broadcasting Foundation, P.O. Box 1232, Lebanon, Missouri 65536.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau